Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

PETER W. MUDIE,

Petitioner,

v.

MILTLAND RALEIGH-DURHAM, (a partnership), INDIVIDUALLY AND IN THE RIGHT OF MYERS MILTLAND RALEIGH DURHAM LIMITED PARTNERSHIP,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether an *ex parte* attachment obtained on the sole grounds that the defendant is a "nonresident" is compatible with the due process requirement that no person can be deprived of his property without prior notice and hearing.

U.S. Const. amend. XIV, § 1

Whether service of process and notice of an attachment to a resident of France (whose address is known), that is effected by publication in Durham, North Carolina, is compatible with the due process requirements for proper notice and the procedures of the Hague Service Convention.

U.S. Const. amend. XIV, § 1; 20 U.S.T. 361

Whether an *ex parte* attachment obtained in action where the plaintiff seeks unliquidated damages for tort is compatible with the due process requirement that no person can be deprived of his property without prior notice and hearing.

U.S. Const. amend. XIV, § 1

PARTIES TO THE PROCEEDING

Peter W. Mudie was defendant below and is the petitioner here. Miltland Raleigh-Durham, a New York general partnership, was plaintiff below and is respondent here.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner respectfully requests that a writ of certiorari issue to review the opinion entered in this case by the North Carolina Court of Appeals on April 2, 1996, affirming the order of the Superior Court of Durham County entered on December 14, 1994.

OPINIONS BELOW

The opinion of the North Carolina Court of Appeals is reported at 122 N.C. App. 168 (1996), and is set forth in Appendix C to this petition. The order of the Superior Court of Durham County entered on December 14, 1994, is unreported and is set forth in Appendix D to this petition.

JURISDICTION

The opinion of the North Carolina Court of Appeals was entered on April 2, 1996. The petitioner timely filed an appeal by right and a petition for discretionary review to the North Carolina Supreme Court. On June 12, 1996, the N.C. Supreme Court dismissed the appeal *ex mero motu* and denied the petition for discretionary review. The petitioner timely filed with the N.C. Supreme Court a petition for reconsideration. On July 30, 1996, the Court denied the petition. App. A, B, C.

This petition is timely filed within ninety days of the denial of the petition for reconsideration. The jurisdiction of this court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following constitutional and statutory provisions:

U.S. Constitution

Amend. XIV, §1

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

North Carolina General Statute §1-440 ("The Attachment Statute")

N.C.G.S. §1-440.2

Attachment may be had in any action the purpose of which, in whole or in part, or in the alternative, is to secure a judgment for money, or in any action for alimony or for maintenance and support, or an action for the support of a minor child, but not in any other action.

N.C.G.S. §1-440.3

In those actions in which attachment may be had under the provisions of G.S. 1-440.2, an order of attachment may be issued when the defendant is

(1) A nonresident, or

(2) A foreign corporation, or

(3) A domestic corporation, whose president, vice president, secretary or treasurer cannot be found in the State after due diligence, or

(4) A resident of the State who, with intent to defraud his creditors or to avoid service of summons,

a. Has departed, or is about to depart, from the State, or

b. Keeps himself concealed therein, or

(5) A person or domestic corporation which, with intent to defraud his or its creditors,

a. Has removed, or is about to remove, property from this State, or

b. Has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, property.

N.C.G.S. §1-440.7(a)

(a) When an order of attachment is issued before the summons is served.

(1) If personal service within the State is to be had, such personal service must be had within 30 days after the issuance of the order of attachment.

(2) If such personal service within the State is not to be had,

a. Service of the summons outside the State, in the manner provided by Rule 4(j)(9)a or b of the Rules of Civil Procedure, must be had within 30 days after the issuance of the order of attachment, or

b. Service by publication must be commenced not later than the thirty-first day after the issuance of the order of attachment. If publication is commenced, such

> publication must be completed as provided by Rule 4(j)(9)c of the Rules of Civil Procedure unless the defendant appears in the action or unless personal service is had on him within the State.

STATEMENT OF THE CASE

The petition arises from a civil complaint filed in the Durham County Superior Court, North Carolina, on October 27, 1992. Miltland Raleigh-Durham, the plaintiff, is a New York general partnership comprised of some 50 lawyers associated with a major New York law firm. It is the sole limited partner of Myers Miltland Raleigh-Durham, a Texas limited partnership. The dispute arose from a speculative land investment by Myers Miltland in Durham in 1985. Plaintiff, in an individual and derivative capacity, claimed damages from the defendant for fraud, breach of duty, and unfair trade practices. At the time of service of the complaint, the defendant (petitioner here) was a resident of St. Guilhem le desert, France. At the time of the acts complained of, he was a resident of Durham County, North Carolina. The defendant does not dispute that the North Carolina Courts can exercise "long arm" jurisdiction over him.

The plaintiff specifically alleged in its complaint that the defendant was a resident of France. On October 27, 1992, a summons was sent by registered mail to the defendant's address in France as shown in the Durham County tax records. This was returned "non reclame" on December 3, 1992. On December 2, 1992, the defendant verified, by facsimile to the plaintiff, that the French address shown in the Durham County tax records was his correct address for service. App. F.

Following this single completed attempt at service on the defendant in France, plaintiff, on December 4, 1992, sought attachment of all the defendant's real property in Durham County. The plaintiff's attachment affidavit stated that the amount claimed was "more than $300,000.00." The only ground advanced for the attachment was that the defendant was "a nonresident." Plaintiff did not allege, nor did it have, any interest in the attached properties, nor did it allege any risk of the defendant disposing of them prior to trial. An attachment in the amount of $330,000.00 was granted *ex parte* on December 9, 1992. The attachment encompassed all the defendant's real property in Durham County, North Carolina. The plaintiff furnished a bond in the amount of $5,000.00 as security to the defendant for damages. App. G.

Until January 6, 1993, plaintiff made no further attempt at any form of service of summons or to notify the defendant of the attachment. On that date, plaintiff claims to have mailed a notice of service by publication to the defendant at his address in France. Commencing January 8, 1993, the Notice of Service by Publication and Notice of the Attachment were published for three consecutive weeks in a Durham County newspaper.

Subsequent to the attachment and commencement of service by publication, a second summons sent by the plaintiff by registered mail to the defendant in France was returned "non reclame" on January 9, 1993. Two further summons sent by registered mail to France were returned "refuse" on February 13, 1993, and April 21, 1993, respectively. App. F.

All the summons were sent directly to the defendant by counsel for plaintiff. At no time did the plaintiff comply with, or attempt to comply with, the require-

ments of the Hague Service Convention for extra national service on foreign residents.

On April 29, 1993, the defendant, by special appearance, made a motion to dismiss the complaint for insufficiency of service and improper service. On May 10, 1993, the motion was denied. The Court found as a fact that the defendant's address in France was a matter of public record and that the defendant had confirmed this address to the plaintiff. The order further concluded that the plaintiff had proved service by publication in Durham County. Defendant excepted. App. F.

On June 6, 1994, the defendant sought an increase in the bond to the equivalent of the assessed value of the properties, $660,888.00. The Durham County Superior Court denied the motion but ordered an increase in the bond to $10,000.00. App. E.

On July 7, 1994, defendant filed an amended motion to strike the attachment on the basis that the attachment statute was, on due process grounds, unconstitutional or had been unconstitutionally applied to the defendant.

The defendant's motion was heard on July 16, 1994, and the order denying the motion was entered on December 14, 1994. The Court found as a fact that the attachment was warranted on the grounds that the defendant was a nonresident and the plaintiff sought a money judgment. The order also confirmed that notice and service of process had been effected on the defendant by publication in Durham County. App. D.

Defendant filed notice of appeal. The North Carolina Court of Appeals found that the defendant's assignment of error was insufficient. For this reason, the court declined to address the constitutionality of the N.C.

attachment statute but under its discretionary powers agreed to consider its application and "whether the order of attachment violated (defendant's) due process rights." App. C.

The Court of Appeals reviewed its previous holdings and found that these complied with the tests set out in *Fuentes v. Shevin*, 407 U.S. 67 (1972), *Mitchell v. W.T. Grant & Co.*, 416 U.S. 406 (1974) and *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975). The Court also took into consideration the more recent case of *Connecticut v. Doehr*, 501 U.S. 1 (1991), which held that "due process requires a finding of some exigent circumstance before attachment property without prior hearing." The Court concluded that the defendant's "due process rights were not violated by the failure to provide pre-attachment notice and hearing." The record, the Court continued, "shows that Mr. Mudie was not a resident of North Carolina at the time of the attachment proceedings and that he refused to accept service several times at the address he had verified." The Court ruled that this refusal was a sufficient "exigent circumstance" to show the "likelihood on Mr. Mudie's part to avoid not only the lawsuit but also any potential judgment against him." In response to defendant's argument that attachment was not appropriate in unliquidated tort claims, the Court found that insofar as the attachment order was entered in a specific amount the defendant's due process rights were not violated. App. C.

The defendant thereupon appealed to the North Carolina Supreme Court by right (substantial constitutional question) and in addition, filed a petition for discretionary review. The appeal was dismissed *ex mero motu* and the petition denied. The defendant sought a rehearing of these decisions and was supported in this by the

North Carolina chapter of the American Civil Liberties Union. The petition for rehearing was denied.

REASONS FOR GRANTING THE WRIT

The decision of the North Carolina Court of Appeals is in conflict with the decisions of this Court in *Connecticut v. Doehr,* 501 U.S. 1 (1991) and *De Beers Mines v. United States,* 325 U.S. 212 (1945) on the circumstances justifying *ex parte* attachment. The decision is also in conflict with *Mullane v. Central Hanover Bank & Trust,* 339 U.S. 306 (1950), on the appropriate form of service in an *in rem* or *quasi in rem* action. The decision also raises important issues on the applicability of the Hague Service Convention. These issues were reviewed, but not fully addressed by this Court, in *Volkswagenwerk A.G. v. Schlunk,* 486 U.S. 694 (1988). These issues are the subject of conflicting decisions in the lower state and federal courts.

A. Ex parte attachment based solely on grounds that the Defendant is a nonresident violates this Court's concept of due process.

In *Shaffer v. Heitner,* 433 U.S. 186 (1977), this Court fundamentally altered the conceptual framework of the traditional form of state court jurisdiction. Based upon *Pennoyer v. Neff,* 95 U.S. 714 (1877), this scheme was structured upon the territorial concepts of state power. Under the *Pennoyer* doctrine, *in personam* jurisdiction could only be asserted over a defendant who was present in the forum. This system did, however, allow a plaintiff to obtain *quasi in rem* jurisdiction over a nonresident defendant by attachment of his property located in the forum state. See also, *Harris v. Balk,* 198 U.S. 215

(1905); *The Demise of Foreign Attachment,* 21 Creighton L. Rev. 141 (1988).

In *International Shoe Co. v. Washington,* 326 U.S. 310 (1945), the jurisdictional reach of a state was extended beyond its territorial boundaries by resort to the minimum contacts analysis. The older concept of *quasi in rem* jurisdiction still, however, continued to coexist with this new form of jurisdictional power. Accordingly, "the necessity to obtain jurisdiction" over a defendant was still considered a valid circumstance justifying the *ex parte* attachment of a nonresident's property. See, *Fuentes v. Shevin,* 407 U.S. 67, 91 fn. 23 (1972).

In 1977, the *Shaffer* Court extended the rationale of *International Shoe* by holding that minimum contacts must be satisfied prior to the assertion of *in rem* and *quasi in rem* jurisdiction. In effect, the Court held that a state could no longer use attachments to assert power over nonresidents who were not subject to its long arm jurisdiction. This ruling was recognized by the North Carolina Courts in *Balcon v. Sadler,* 36 N.C. App. 322, 244 S.E.2d 164 (1978). Nevertheless, North Carolina (as do other states)[1] still permits *ex parte* attachment of the property of "nonresidents" who are (and despite the fact that they are) subject to long arm jurisdiction.

No doubt conscious of the weakness of the "necessity to obtain jurisdiction" argument, some courts, as in this case, seek to buttress foreign attachment by arguing that it also assists in protecting the plaintiff's interest in securing an enforceable judgment. *I.T.C.*

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[1]Some 37 states retain statutory authority for *ex parte* attachment when the defendant is a non resident or a foreign corporation. *The New Quasi In Rem Jurisdiction,* 55 Brooklyn L. Rev. 1059 (1990).

Entertainment Ltd. v. Nelson Film Partners, 714 F.2d 217, 220-21 (2nd Cir. 1983); *Polar Shipping Ltd. v. Oriental Shipping Corp.,* 680 F.2d 627, 637-638 (9th Cir. 1982); *Merchants National Bank v. Dredge Gen.,* 663 F.2d 1338, 1346-47 (5th Cir. 1981).

In the case at hand, the order imposing the attachment was based solely on the grounds that the defendant was a "nonresident". There was no allegation in the attachment affidavit or finding in the attachment order that there was any risk of the defendant disposing his properties prior to judgment.

This Court then will be asked to consider whether the North Carolina Court of Appeals is justified in assuming that nonresidents, as a class, are more likely to abscond with their property prior to judgment than residents, and whether this and "nonresident" standing alone is an exigent circumstance sufficient to justify an *ex parte* attachment.

In *Connecticut v. Doehr,* Justice Rehnquist in his concurring opinion with Justice Blackmun, said that this Court awaits a "concrete" case raising this very issue of "nonresidency" as a ground for attachment. This issue is presented to the Court here today. *Doehr,* 501 U.S. at 30.

B. Local publication is impermissible for service of notice in an action quasi in rem on a nonresident whose address is known.

The North Carolina attachment statute (N.C.G.S. §1-440 *et seq.*) makes no overt requirement for service of notice following an *ex parte* attachment. Instead it relies solely on service of process to serve this end. Notice of the attachment and service of process are, as far as the North Carolina statute is concerned, dif-

ferent sides of the same coin. In this petition they are treated accordingly. App. H.

The provision of notice following attachment is of particular importance in North Carolina since N.C.G.S. §1-440.44 provides that the sheriff "shall apply" to the Court to have the attached property sold if the defendant does not furnish a bond within 10 days of the attachment. App. H.

The *Shaffer* Court, in extending the rationale of *International Shoe*, cited from *Mullane* holding that notice by publication was insufficient with respect to an individual whose name and address was known. It drew no distinction between actions *in rem*, *quasi in rem* and *in personam*. After commenting on the vagueness of these classifications the Court said:

> "The requirements of the 14th amendment to the Federal Constitution do not depend on a classification for which standards are so elusive and confused generally and which, being primarily for state courts to define, may and do vary from state to state." *Mullane*, 339 U.S. at 312; *Shaffer*, 433 U.S. at 206.

Despite this holding, vestiges of *Pennoyer* jurisdictional doctrine still remain in the North Carolina attachment statute and are being applied to nonresidents who are subject to its long arm jurisdiction. The procedure for local publication on a nonresident was recognized in *Pennoyer*, 95 U.S. at 727. Judgment following attachment was, however, limited to the extent of the res and could not be used to obtain a personal judgment against the defendant. These very provisions still form part of the North Carolina attachment statute. The question is whether "these ancient forms" still comport with substantial justice and fair play for nonresidents regardless of whether they reside in South Carolina or the South

of France. In particular is local publication, following attachment, still a proper form of notice to a defendant whose address is known.

The fact that the defendant was a resident of France, however, raises the second issue of the applicability of the Hague Service Convention. App. I.

In *Volkswagenswerk A.G. v. Schlunk,* 486 U.S. 694 (1988), this Court undertook an extensive review of the Convention. The issue was whether service could be effected on Volkswagen, Germany by service on its subsidiary, Volkswagen of America, by following the state rules of civil procedure rather than the Hague Service Convention. The Court found this substituted local service acceptable.

This Court, however, still recognized the importance of the scope of the Convention and ruled the Convention provided the *only* acceptable method of service abroad. Thus, in cases in which it applies, the Convention preempts other methods of service by state law. However, the Court noted the Convention does not specify the circumstances in which "there is occasion . . . for service abroad". Justice O'Connor, in determining the scope of the Convention, found that, since the Convention itself does not define a standard for measuring the sufficiency of service, the internal law of the forum state must determine whether the applicable method of service requires the transmittal of documents abroad and accordingly whether service complies with the procedures in the Convention. *Id.* at 2108.

Justice Brennan in his concurring opinion was critical of the majority's reasoning because he found that it was:

> "implausible that the Convention's framers intended to leave each contracting nation, and each of the 50

> states within our Nation, free to decide for itself under what circumstances, if any, the Convention would control." *Id.* at 2112.

Instead, Justice Brennan regarded the term "service abroad" as one which connotes a "substantial standard" that would limit a forum's discretion with regard to service domestically. Justice Brennan suggested that the Court's interpretation could permit the revival of the French procedure of *notification au parquet* whereby service on a foreign defendant was permitted by deposit of documents with a local official. It is ironic that in the case at hand we should be confronted with service on a French resident by a state rule which is just as inequitable. The petitioner will ask the Court to reach further in the matter of the applicability of the Convention and in particular to determine whether it should be interpreted as imposing "some substantive limit on the forum state's latitude to deem such service domestic." *Id.* at 2115.

The North Carolina Court of Appeals found as fact that this attachment was justified on the grounds that the defendant was a nonresident and evading the legal system. In doing so the Court cited a number of unsuccessful attempts at service by mail to his address in France. All these attempts, save one were completed *after* the attachment had already taken place. App. C.

This finding by the Court, on appeal, conflicts with this Court's holding in *Fuentes* that:

> "No later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. . . . This Court has not . . . embraced the general proposition that a wrong may be done if it can be undone." *Fuentes,* 407 U.S. at 82.

The more important issue, however, is whether this form of service by mail from the United States was a proper attempt at service in the first place. This question was raised on appeal but the Court chose not to address it. It is the subject of conflicting lower federal and state decisions. The disputed Article reads:

> "Provided the State of destination does not object, the present Convention shall not interfere with the freedom to send judicial documents, by postal channels, directly to the persons abroad." Article 10(a).

A number of courts have held that this Article permits the service by process by mail directly from the United States to the defendant. *Smith v. Dainichi Kinzoku Co.*, 680 F. Supp. 847 (W.D. Tex. 1988); *Lemme v. Wine of Japan Import Inc.*, 631 F. Supp. 456 (E.D.N.Y. 1986). *Hayes v. Evergo Telephone Co.*, 100 N.C. App. 474, 397 S.E.2d 325 (1990). Other courts disagree, contending the word "send" is not the equivalent of service of process. These courts contend that Article 10(a) simply provides a method of sending subsequent documents *after* service of process has been obtained through the Central Authority of the contracting state. *Bankston v. Toyota Motor Corp.*, 123 F.R.D. 595 (W.D.Ark. 1989), 899 F.2d 172 (8th Cir. 1990); *McClennon v. Nissan Motor Corp.*, 726 F. Supp. 822 (N.D. Fla. 1989); *Suzuki Motor Co. v. Superior Court*, 249 Cal. Rptr. 376 (1988).

The diversity of the opinions highlights the fundamental validity of the concerns raised by Justice Brennan in his concurring opinion quoted above. See also, *Service of Process by Mail in International Civil Action*, 112 A.L.R. FED. 241.

In summary, this Court will be asked to consider whether, with the maturity of long arm jurisdiction, there still remains a place in our jurisprudence for different

procedures for actions *in personam* and actions *in rem*. The Court will also be asked to consider what, if any, limits are placed on the discretion of forum states to determine the appropriate form of service on foreign nonresidents who are subject to the Hague Service Convention. In particular, does this discretion extend to permitting service by local publication?

C. Attachment may not be had in actions where plaintiff seeks unliquidated damages in tort.

This Court, in a series of decisions finding various state attachment statutes unconstitutional, consistently held that, except in exceptional circumstances, attachment without prior notice and hearing is a deprivation of a defendant's due process rights. *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969); *Fuentes, supra*; *North Georgia Finishing, Inc., supra; Doehr, supra.*

This Court has also consistently held that there must be a factually demonstrated "special need for prompt action" prior to granting an *ex parte* attachment. *Fuentes,* 407 U.S. at 90-91, *Doehr,* 501 U.S. at 16, *United States v. Good Real Property,* 50 U.S. 43 (1993). See *Connecticut v. Doehr and Procedural Due Process,* 709 Cornell L. Rev. 1603 (1994).

In *Mitchell v. W.T. Grant Co.*, 416 U.S. 600 (1974), the Court did permit *ex parte* attachment under a Louisiana statute where attachment was limited to a plaintiff who had a security interest in property and had shown by affidavit that the property was at risk. *Id.* at 623.

The *Doehr* Court, following *Mitchell,* recognized that these types of actions for debt involve "ordinarily uncomplicated matters that lend themselves to documentary

proof." Such cases are readily open to *ex parte* findings of probable cause. In contrast, the Court warned "tort actions, like assault and battery, do not" warrant *ex parte* findings of probable cause. *Doehr,* 501 U.S. at 17. See also, *De Beers Mines, supra.*

The North Carolina statute (as do other similar state statutes) permits attachment in all actions that seek a "judgment for money." Under this provision, attachment has been allowed in actions for slander. *Thrush v. Thrush,* 246 N.C. 114, 97 S.E.2d 472 (1957). In the case of non-residents, there is no requirement to show a need for prompt action. App. H.

The respondent, in its attachment affidavit, claimed damages for tort of "more than $330,000.00". The petitioner argued that, following the rulings in *Doehr* and *De Beers,* attachment was not permitted in actions, like fraud, which seek unliquidated damages. The North Carolina Court of Appeals held that since the attachment order itself was entered in an amount certain ($330,-000.00), the petitioner's "argument fails". App. C.

The petitioner will ask the Court whether attachment is permissible in actions seeking unliquidated damages for tort and whether this can be cured by an attachment order that specifies a sum certain.

CONCLUSION

Attachment and service of process live in the same judicial realm. It is a world of forms, functionaries and rubber stamps. The clerks who are empowered to act in these *ex parte* proceedings do not have the time to weigh in the balance the due process merits of an attachment. They lack the judicial skills to determine the applicability of a United States Treaty with some foreign country. In the absence of some substantial standards by which they can judge appropriateness of their actions, the door is open wide to abuse of process.

WHEREFORE, Petitioner respectfully requests the Court to grant this petition and issue a writ of certiorari to the North Carolina Court of Appeals to review its decision.

Respectfully submitted,

PETER SARDA
(Counsel of Record)
WALLACE, CREECH
AND SARDA, L.L.P.
3605 Glenwood Avenue
Suite 240
P.O. Box 12065
Raleigh, North Carolina 27605
(919) 782-9322
Counsel for Petitioner.

October 15, 1996

APPENDIX A

[SEAL]

SUPREME COURT OF NORTH CAROLINA
CHRISTIE SPEIR CAMERON, Clerk
Justice Building, 2 E. Morgan Street
Raleigh, N C 27601
(919) 733-3723

Fax: (919) 733-0105
BBS: (919) 733-0486

Mailing Address:
P O Box 2170
Raleigh, N C 27602

1 August 1996

From NC Court of Appeals
(COA95-313)
From Durham
(92CVS04677)

Mr. Peter J. Sarda
Attorney at Law
Wallace Creech & Sarda, L.L.P.
P.O. Box 12065
Raleigh, NC 27605

Re: Miltland Raleigh-Durham v Peter Mudie
No. 208P96

Dear Mr. Sarda:

Motion by Defendant for Reconsideration of Notice of Appeal and Petition for Discretionary Review has been filed and the following order entered:

"Motion Dismissed by order of the Court in conference this the 30th day of July 1996.

s/ Orr, J.
For the Court"

Very truly yours,

Christie Speir Cameron
Clerk of Supreme Court

/s/ Marvea J. Francis
Marvea J. Francis
Assistant Clerk

Copy to:
Mr. John R. Wallace, Attorney at Law, For Mudie
Mr. V. Lane Wharton, Jr., Attorney at Law, For Miltland
Raleigh-Durham

APPENDIX B

No. 208P96 FOURTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

MILTLAND RALEIGH-DURHAM (A Partnership), Individually and in the right of Myers Miltlant Raleigh-Durham, Limited Partnership

v

PETER W. MUDIE

From NC Court of Appeals (COA95-313) From Durham (92CVS04677)

****

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by Defendant in this matter pursuant to G.S. 7A-30 (substantial constitutional question), the following order was entered and is hereby certified to the North Carolina Court of Appeals: the Notice of Appeal is

"Dismissed ex mero motu by order of the Court in conference, this the 12th day of June 1996.

s/ Orr, J.
For the Court"

Upon consideration of the petition filed by Defendant in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appels:

"Denied by order of the Court in conference, this the 12th day of June 1996.

s/ Orr, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 14th day of June 1996.

Christie Speir Cameron
Clerk, Supreme Court of North Carolina

/s/ Marvea J. Francis
Marvea J. Francis
Assistant Clerk

Copy to:
North Carolina Court of Appeals
Mr. Peter J. Sarda, Attorney at Law, For Mudie
Mr. John R. Wallace, Attorney at Law, For Mudie
Mr. V. Lane Wharton, Jr., Attorney at Law,
For Miltland Raleigh-Durham
Mr. Ralph A. White, Appellate Court Reporter
West Publishing Company
Mead Data Corporation
Shephard's McGraw-Hill

[SEAL]

APPENDIX C

NO. COA95-313

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 1996

MILTLAND RALEIGH-DURHAM (A Partnership), Individually and in the right of Myers Miltland Raleigh-Durham, Limited Partnership,
Plaintiff,

v.

Durham County
No. 92-CVS 04677

PETER W. MUDIE,
Defendant.

Appeal by defendant from order entered 15 December 1994 by Judge D. Jack Hooks, Jr. in Durham County Superior Court. Heard in the Court of Appeals 22 January 1996.

Hunter, Wharton & Stroupe, L.L.P., by V. Lane Wharton, Jr., for plaintiff-appellee.

Wallace, Creech, Sarda & Zaytoun, L.L.P., by John R. Wallace and Peter J. Sarda, for defendant-appellant.

LEWIS, Judge.

At issue in this case is the entry of an order of attachment. Because we determine that the order did not violate plaintiff's due process rights, we affirm the trial court's denial of defendant's motion to dissolve the attachment.

This case arises out of a 1985 purchase of property in Durham by Myers Miltland Raleigh-Durham ("Myers"), a Texas limited partnership. Plaintiff Miltland Raleigh-Durham ("Miltland"), a New York general partnership, is the sole limited partner in Myers. Defendant Mudie allegedly conspired against Miltland representatives, causing Myers to pay an inflated amount for the property. Miltland sued defendant for fraud, breach of duty and unfair and deceptive practices.

In October 1992, after checking Durham County tax records and records at the Department of Motor Vehicles, Miltland attempted to serve defendant at the listed addresses in Durham, North Carolina, London, England, and St. -Guilhem-le-Desert, France. The complaint was returned unserved. The next month an Alias and Pluries Summons was sent by registered mail to defendant at his address in France but was returned unclaimed. On 2 December 1992 defendant sent a letter to representatives of Miltland stating that he was presently living at the address in France. Miltland then sought to attach property owned by the defendant in Durham pursuant to N.C. Gen. Stat. section 1-440 et seq. on the basis that defendant was a nonresident. On 9 December 1992 an order of attachment was signed.

Beginning 8 January 1993 Miltland published a Notice of Service of Process by Publication in the Durham County Herald-Sun newspaper for three successive weeks. The notice also contained notice of the attachment. Following this, Miltland sent two more Alias and Pluries Summons to the address in France on 20 January 1993 and 5 April 1993, both of which were refused.

On 2 June 1994, making a special appearance, defendant sought an order increasing the amount of the bond which Miltland was required to post prior to the attach-

ment order. The court raised the bond from $5,000 to $10,000. On 7 July 1994 defendant moved to dissolve the order of attachment on the grounds that, among others, it was unconstitutional and plaintiff had no grounds for attachment. This motion was denied by order of the trial court entered 15 December 1994. Defendant appeals from this order.

On appeal defendant has made one very broad assignment of error which he then proceeds to break down into nine arguments in his brief. Rule 10 of the Rules of Appellate Procedure states that each assignment of error "shall . . . be confined to a single issue of law; and shall state plainly, concisely and without argumentation the legal basis upon which error is assigned." N.C.R. App. P 10(c)(1) (1996). This rule exists to " 'identify for the appellee's benefit all the errors possibly to be urged on appeal . . . so that the appellee may properly assess the sufficiency of the proposed record on appeal to protect his position' " and to "enable[ ] the appellate court to 'fairly and expeditiously' consider the assignments of error as framed without 'making a voyage of discovery' through the record in order to determine the legal questions involved." *Kimmel v. Brett,* 92 N.C. App. 331, 335, 374 S.E.2d 435, 437 (1988) (quoting N.C.R. App. P. 10(c), commentary).

Defendant's assignment of error reads as follows:

> 1. The court's denial of Defendant's motion to dissolve the order of attachment on the grounds that the attachment order was improperly entered and in violation of Defendant's due process rights. Further, the attachment statute, as applied to this defendant is in violation of the Constitution of the United States.

This assignment clearly violates Rule 10. It is not confined to a single issue of law and fails to state the legal basis for the assertion that the order was "improperly entered." Therefore, plaintiff's exceptions should be deemed abandoned. *See id.* However, using our Rule 2 discretionary powers, we have chosen to consider whether the order of attachment violated appellant's due process rights, as it is the only legal basis provided by appellant in his assignment of error. Similarly, we do not consider appellant's argument that our attachment statute is unconstitutional because appellant only assigned error to the application of the statute in this case. *See* N.C.R. App. P. 28(b)(5)(1996).

In arguing that his due process rights were violated in the application of G.S. section 1-440 et seq., appellant relies on a line of United States Supreme Court cases beginning with *Fuentes v. Shevin,* 407 U.S. 67, 32 L.Ed.2d 556 (1972). He argues that the attachment of his property did not comply with the safeguards required by the Supreme Court in prejudgment attachment proceedings. We disagree.

Defendant argues that his due process rights were violated because he did not receive notice and hearing prior to the attachment of his property. This Court has already addressed the issue of whether notice and a hearing are required prior to attachment under G.S. section 1-440 et seq. In *Properties, Inc. v. Ko-Ko Mart, Inc.,* 28 N.C. App. 532, 222 S.E.2d 267, *disc. review denied,* 289 N.C. 615, 223 S.E.2d 392 (1976), this Court analyzed our attachment statute and found that it complied with the tests set out by the Supreme Court in *Fuentes, Mitchell v. W.T. Grant Co.,* 416 U.S. 600, 40 L.Ed.2d 406 (1974) and *North Georgia Finishing, Inc., v. Di-Chem, Inc.,* 419 U.S. 601, 42 L.Ed.2d 751 (1975), three

cases relied on by appellant. 28 N.C. App. at 539-40, 222 S.E.2d at 272-273; *accord Hutchinson v. Bank of North Carolina,* 392 F.Supp. 888, 898 (M.D.N.C. 1975). In *Properties,* this Court concluded that prior notice and hearing is not required in an attachment proceeding. 28 N.C. App. at 542, 222 S.E.2d at 273; *see also Connolly v. Sharpe,* 49 N.C. App. 152, 270 S.E.2d 564 (1980) (finding attachment statute in compliance with federal due process requirements).

Appellant cites two United States Supreme Court cases decided subsequent to *Properties* and *Connolly.* In *Connecticut v. Doehr,* 501 U.S. 1, 115 L.Ed.2d 1 (1991), the court held that due process requires a finding of "some exigent circumstance" before attaching property without a prior hearing. 501 U.S. at 18, 115 L.Ed.2d at 18. *United States v. Good Real Property,* ___ U.S. ___ , 126 L.Ed.2d 490 (1993), dealt with the ex parte seizure, not prejudgment attachment, of real property. However, the court mimicked the language of *Doehr,* stating that pre-deprivation notice and hearing are required unless exigent circumstances are present. *Id.* at ___ , 126 L.Ed.2d at 508-09.

After reviewing these recent cases, we conclude that appellant's due process rights were not violated by the failure to provide pre-attachment notice and hearing under the present facts. The record shows that Mr. Mudie was not a resident of this state at the time the attachment proceedings were commenced and that he refused to accept service several times at an address he had verified. We hold that under these facts, this evasion of the judicial system is sufficient to constitute an "exigent circumstance" which evidences a likelihood on Mr. Mudie's part to avoid not only the lawsuit but also any potential judgment against him.

Defendant Mudie also argues that the attachment violates his due process rights because the damages at issue were "unliquidated." However, the attachment order specifies a sum certain, namely $330,000. This argument fails.

As stated above, we do not address any of the arguments set forth by appellant based on the constitutionality of G.S. section 1-440 *et seq.*, jurisdiction, capacity or sufficiency of the bond as they were not properly preserved for our review.

The order of the trial court is

Affirmed.

Chief Judge ARNOLD and Judge WALKER concur.

APPENDIX D

[Filed DEC 15 1994]

NORTH CAROLINA

DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

92 CVS 04677

MILTLAND RALEIGH-DURHAM (A Partnership), individually and in the right of Myers Miltland Raleigh-Durham Limited Partnership,

Plaintiff,

v.

PETER W. MUDIE,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO DISSOLVE ORDER OF ATTACHMENT

This cause came on to be heard before the undersigned on July 15, 1994, at a regular civil session of Durham County Superior Court, on the motion and amended motion to dissolve attachment order filed herein by the Defendant, Peter W. Mudie. The Plaintiff was represented by counsel, V. Lane Wharton, Jr., and the Defendant was represented by counsel, John R. Wallace and Peter J. Sarda. The parties consented to the entry of this order out of term, out of session, and out of county, and the parties stipulated that the

Court could rule from matters of record, the motion and brief of the Defendant, and the response of the Plaintiff.

Based upon the foregoing, the Court makes the following:

FINDINGS OF FACTS

1. The complaint in this action was filed in the Durham County Clerk of Court's Office on October 27, 1992 at 1:01 p.m., File No. 92 CVS 04677.

2. On October 27, 1992, a summons was issued to the Durham County Sheriff's Office for service together with a copy of the complaint on Peter W. Mudie at 2713 Augusta Drive, Durham, North Carolina 27707, which was returned with the notation by the process server that he was informed that Peter W. Mudie was a resident of France.

3. On October 27, 1992, a summons and a copy of the complaint were mailed by International Registered Mail, Return Receipt Requested, to the Defendant at the following address in England:

Peter W. Mudie
12 Bowater Place
Blackheath
London, England 00253

The complaint was returned to us marked "Return to Sender - Gone Away" on November 12, 1992.

4. On Octoer 27, 1992, a summons and complaint were mailed by International Registered Mail, Return Receipt Requested, to the Defendant at the following address in France:

Peter W. Mudie
12 rue du Bout de Monde
34150 St-Guilhem-le-Desert, France

The complaint was returned to us on December 3, 1992 marked "Non Reclame - Retour a L'Envoyeur" which means "Unclamed - Return to Sender."

5. On November 25, 1992, an Alias and Pluries Summons was issued for service on Defendant and was mailed along with the complaint by International Registered Mail, Return Receipt Requested to the Defendant at his address in France. On January 9, 1993, said complaint was returned to us marked "Non Reclame - Retour a L'Envoyeur."

6. On December 2, 1992, the Defendant Peter Mudie sent a letter to Richard Stark, one of the General Partners of the Plaintiff. The letter shows an address in France for Mr. Mudie and states that he (Mudie) will be travelling to South Africa "during the latter half of December and January."

7. On December 4, 1992, an Affidavit in Attachment Proceeding was signed by Richard A. Stark, General Partner of Miltland Raleigh-Durham.

8. A Plaintiff's Bond for $5,000 was signed December 8, 1992 by Richard A. Stark, General Partner of Miltland Raleigh-Durham and Matthew W. Varner, Attorney-in-Fact for Fireman's Insurance Company of Newark, New Jersey.

9. On December 9, 1992, Robert H. Hobgood, Superior Court Judge, signed an Order of Attachment for $330,000.00. The Order was filed December 9, 1992 at 1:13 p.m.

10. On December 14, 1992, Peter J. Sarda, an attorney for the Defendant Mudie, wrote a letter to counsel

for the Plaintiff in which Mr. Sarda refused to accept service of process on behalf of Mr. Mudie.

11. On January 6, 1993, a Notice of Service of Process by Publication was mailed to the Defendant Peter W. Mudie at his last known address in France and a copy was also sent to Mr. Peter Sarda. Counsel for the Plaintiff had been unable despite the exercise of due diligence to serve Mr. Mudie at any address known to Plaintiff and the Defendant's whereabouts in January, 1993, was unknown, as he was supposedly travelling in South Africa.

12. The Notice of Service of Process by Publication was published in the Herald-Sun, a newspaper published in and of general circulation in Durham County, North Carolina, for three successive weeks, beginning on the 8th day of January, 1993.

13. The Defendant Mudie made a motion in this cause to dismiss the complaint for insufficiency of process and insufficiency of service of process, which motion was denied by this Court on May 11, 1993.

14. On February 15, 1994, the Defendant Mudie filed a motion to strike the order of attachment entered herein.

15. On June 6, 1994, the Defendant Mudie moved for an order increasing the Plaintiff's attachment bond, which was allowed in part by order of this Court which required Plaintiff to increase the attachment bond to $10,000.

16. On July 7, 1994, the Defendant Mudie filed a new motion to dissolve and strike the Order of Attachment previously entered herein.

17. This is an action the purpose of which is to secure a judgment for money.

18. The Defendant is a non-resident of the State of North Carolina.

19. Service of process by publication was commenced by the Plaintiff not later than the thirty-first day after the issuance of the order of attachment herein.

CONCLUSIONS OF LAW

1. This is an action in which an order of attachment may be entered pursuant to the provisions of N.C.G.S. §1-440.2, in that this is an action in which Plaintiff seeks a money judgment.

2. The Plaintiff has established grounds for the issuance of an order of attachment pursuant to N.C.G.S. §1-440.3(1), in that the Defendant is a non-resident of the State of North Carolina.

3. This Court has previously determined that the Defendant Mudie was properly served by publication and that the publication commenced within thirty-one days after the issuance of the order of attachment herein.

4. An order of attachment may be entered in an action where the Defendant is served by publication pursuant to the provisions of N.C.G.S. §1-440.7(2) b.

5. This issuance of an order of attachment is not unconstitutional under the circumstances of this case and does not deprive the Defendant of due process of law or any other rights guaranteed to him by the Constitutions of the State of North Carolina and of the United States.

Wherefore, the Court being of the opinion that the motion and amended motion to dissolve attachment order should be denied, it is, therefore, so ordered.

This the 14th day of December, 1994.

D. Jack Hooks
Superior Court Judge Presiding

APPENDIX E

[Filed June 10, 1994]

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 92-CVS-04677

MILTLAND RALEIGH-DURHAM, (A Partnership) individually and in the right of Myers Miltland Raleigh-Durham Limited Partnership,

Plaintiff,

v.

PETER W. MUDIE,

Defendant.

ORDER PURSUANT TO N.C.G.S. § 1-440.40 INCREASING PLAINTIFF'S ATTACHMENT BOND

THIS CAUSE coming on to be heard, and being heard, before the undersigned Judge Presiding in the Superior Court of Durham County on the 10th day of June, 1994, on Defendant's Motion for an Order increasing Plaintiff's Bond; and

The parties being represented by counsel, V. Lane Wharton, Jr. in behalf of the Plaintiff, and John R. Wallace in behalf of the Defendant; and

The Court, having considered matters submitted to the Court by the parties, including arguments of counsel, in its discretion and for good cause shown, being of the opinion that the Motion of the Defendant should be allowed;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Bond required of Plaintiff in support of its Attachment be, and hereby is, increased to the amount of $10,000, such Bond to be posted on or prior to June 30, 1994.

This the 10 day of June, 1994.

A. M. Brannon
Judge Presiding
Superior Court of Durham County

APPENDIX F

NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
92 CVS 04677

MILTLAND RALEIGH-DURHAM, (A Partnership), individually and in the right of Myers Miltland Raleigh-Durham Limited Partnership,

Plaintiff,

v.

PETER W. MUDIE,

Defendant.

ORDER

This matter came on to be heard before the undersigned at the April 26, 1993 non-jury civil term of Durham County Superior Court. Present and appearing on behalf of the Plaintiff was V. Lane Wharton, Jr., Hunter, Wharton, Stroupe & Lynch, Raleigh, North Carolina. Making a limited appearance on behalf of the Defendant was Peter J. Sarda, Wallace, Creech, Sarda & Zaytoun, Raleigh, North Carolina. The matters before the court were the motions of the Defendant to dismiss the complaint for lack of jurisdiction, insuffiency of process, and insufficiency of service of process. At the close of the hearing, counsel for Plaintiff and Defendant stipu-

lated that the Court could enter an Order after the expiration of the term.

Based upon the materials in the court's file, the Affidavit of V. Lane Wharton, Jr. filed herein on April 28, 1993, and the representations of counsel, the court makes the following:

FINDINGS OF FACT

1. The complaint in this action was filed in the Durham County Clerk of Court's Office on October 27, 1992 at 1:01 p.m., File No. 92 CVS 04677.

2. Counsel for Plaintiff conducted an investigation as to the address of the Defendant Peter W. Mudie prior to filing the complaint. Documents in the Registry of Deeds of Durham County, North Carolina, recited that Mudie owns property in Durham County. The records of the Durham County Tax Collector show an address for Mudie listing his property as 12 rue de bout de Monde, 34150 St. Guilhem-le-Desert, France. Records at the Vehicle Registration Section of the North Carolina Division of Motor Vehicles showed addresses for Mudie at 12 Bowater Place, Blackheath, London, England and at 2713 Augusta Drive, Durham, North Carolina 27707.

3. On October 27, 1992, a summons was issued to the Durham County Sheriff's Office for service together with a copy of the complaint on Peter W. Mudie at 2713 Augusta Drive, Durham, North Carolina 27707, which was returned with the notation by the process server that he was informed that Peter W. Mudie was a resident of France.

4. On October 27, 1992, a summons and a copy of the complaint were mailed by International Registered Mail,

Return Receipt Requested, to the Defendant at the following address in England:

Peter W. Mudie
12 Bowater Place
Blackheath
London, England 00253

The complaint was returned marked "Return to Sender - Gone Away" on November 12, 1992.

5. On October 27, 1992, a summons and complaint were mailed by International Registered Mail, Return Receipt Requested, to the Defendant at the following address in France:

Peter W. Mudie
12 rue du Bout de Monde
34150 St-Guilhem-le-Desert, France

The complaint was returned on December 3, 1992 marked "Non Reclame - Retour a L'Envoyeur" which means "Unclaimed - Return to Sender."

6. On November 25, 1992, an Alias and Pluries Summons was issued for service on Defendant and was mailed along with the complaint by International Registered Mail, Return Receipt Requested to the Defendant at his address in France. On January 9, 1993, said complaint was returned marked "Non Reclame - Retour a L'Envoyeur."

7. On December 2, 1992, the Defendant Peter Mudie sent a letter to Richard Stark, one of the General Partners of the Plaintiff. The letter shows an address in France for Mr. Mudie and states that Mudie will be travelling to South Africa "during the latter half of December and January."

8. On December 4, 1992, an Affidavit in Attachment Proceeding was signed by Richard A. Stark, General Partner of Miltland Raleigh-Durham.

9. A Plaintiff's Bond for $5,000 was signed December 8, 1992 by Richard A. Stark, General Partner of Miltland Raleigh-Durham and Matthew W. Varner, Attorney-in-Fact for Firemen's Insurance Company of Newark, New Jersey.

10. On December 9, 1992, Robert H. Hobgood, Superior Court Judge, signed an Order of Attachment. The Order was filed December 9, 1992 at 1:13 p.m.

11. On December 14, 1992, Peter J. Sarda, an attorney for the Defendant Mudie, wrote a letter to counsel for Plaintiff in which Mr. Sarda indicated that he represented the Defendant but refused to accept service of process on behalf of Mr. Mudie.

12. On January 6, 1993, a Notice of Service of Process by Publication was mailed to the Defendant Peter W. Mudie at his last known address in France and a copy was also sent to Mr. Peter Sarda. This Notice complies with the provisions of North Carolina Rules of Civil Procedure 4(j1).

13. Counsel for Plaintiff has been unable despite the exercise of due diligence to serve Mr. Mudie at any address known to Plaintiff and the Defendant's whereabouts in January, 1993, was unknown to Plaintiff as the Defendant was supposedly travelling in South Africa.

14. The Notice of Service of Process by Publication was published in the Herald-Sun, a newspaper published in and of general circulation in Durham County, North Carolina, for three successive weeks, beginning on the 8th day of January, 1993, according to an Affidavit of Publication dated January 25, 1993.

15. On January 20, 1993, an Alias and Pluries Summons was issued for service on Defendant, and was mailed with the complaint by International Registered

Mail, Return Receipt Requested, to the Defendant at his address in France. The complaint was returned on February 13, 1993 marked "Refuse - Retour a L'Envoyeur", which means "Refused - Return to Sender."

16. On April 5, 1993, an Alias and Pluries Summons was issued for service on Defendant, and was mailed with the complaint by International Registered Mail, Return Receipt Requested, to the Defendant at his address in France. The complaint was returned on April 21, 1993 marked "Refuse - Retour a L'Envoyeur".

17. The Plaintiff's cause of action in this matter arose out of an act or omission of the defendant within the State of North Carolina.

18. By calling the Plaintiff on the telephone in December, 1992, the Defendant Mudie was engaged in business in North Carolina.

19. The Defendant had actual timely notice of Plaintiff's complaint before the expiration of the period of time for answer set out in the Plaintiff's notice of service of process by publication.

CONCLUSIONS OF LAW

1. This court has jurisdiction over the person of the Defendant pursuant to North Carolina General Statute §1-75.4(1)(d) and (3).

2. The Plaintiff has proved service of process upon the Defendant by publication pursuant to the provisions of North Carolina General Statute §1-75.10 by the filing of an affidavit showing the publication and mailing in accordance with the requirements of Rule 4(j1) of the North Carolina Rules of Civil Procedure and in accordance with the requirements of North Carolina General Statute §1-75.10(2).

Now, therefore, it is hereby ordered:

(1) That the motion of the Defendant to dismiss the complaint for lack of personal jurisdiction is denied;

(2) That the motion of the Defendant to dismiss the complaint for insufficiency of process is denied;

(3) That the motion of the Defendant to dismiss the complaint for insufficiency of service of process is denied, and

(4) That the Defendant is required to serve a responsive pleading to the Plaintiff's complaint within 20 days after the service of a copy of this order by the Plaintiff upon counsel for the Defendant.

This the 10 day of May, 1993.

/s/ George R. Greene
George R. Greene
Judge Presiding

The Court notes that the Defendant excepts to the Findings of Fact, Conclusions of Law, and to the entry of this Order.

/s/ George R. Greene
George R. Greene
Judge Presiding

CERTIFICATE OF SERVICE

I, V. Lane Wharton, Jr., attorney for Plaintiff, certify that I served the foregoing Order on the 10th day of May, 1993, upon the Defendant, Peter W. Mudie, by leaving a copy with an employee in the office of Peter J. Sarda, attorney for the Defendant at the following address:

3605 Glenwood Avenue, Suite 390
Raleigh, North Carolina 27612

This 10th day of May, 1993.

/s/ V. Lane Wharton, Jr.
V. Lane Wharton, Jr.
State Bar No. 6442
HUNTER, WHARTON, STROUPE & LYNCH
2626 Glenwood Avenue, Suite 430
P.O. Drawer 10037
Raleigh, North Carolina 27605
(919) 881-9110

Attorney for Plaintiff

STATE OF NORTH CAROLINA

Durham County

File No. 92 CVS 04677

Film No.

In the General Court of Justice
☐ District Court Division ☐ Superior Court Division

Plaintiff
MILTLAND RALEIGH-DURHAM, (A Partnership), individually and in the right of Myers Miltland Raleigh-Durham Limited Partnership

ORDER OF ATTACHMENT

GS 1-440.12; .13

VERSUS

Defendant
PETER W. MUDIE

☐ *Alias and Pluries Summons
The summons originally issued against you was returned not served.

Date last order issued

* Disregard this section unless the block is checked

To The Sheriff of the County Named Below:

The above named plaintiff has applied for an attachment of the defendant's property in this action and has executed and delivered to the Court a satisfactory attachment bond. It appears to the satisfaction of the Court that the allegations in the plaintiff's affidavit are true.

You are commanded to attach and keep safely as much of the property of the defendant within your county which is subject to attachment, as is sufficient to satisfy the amount sought in the Affidavit in Attachment Proceeding, the costs of the action and expenses. You are further commanded to make return of this Order to this Court within the time allowed by law. The amount sufficient to satisfy the plaintiff's demand is shown below.

County in which order to be served	Date issued
Durham	December 9, 1992
Amount sufficient to satisfy plaintiff's demand	**Signature** Robert K. Hobgood
	☐ Assistant CSC ☐ Clerk of Superior Court
$ 330,000.00	☐ District Court Judge ☒ Superior Court Judge

Note: You may want to attach the Affidavit in Attachment Proceeding (AOC-CV-300) to this order.

(OVER)

BEST AVAILABLE COPY

RETURN OF SERVICE

I certify that pursuant to this Order I levied on the following described property of the defendant on the date set out below:

28a

DATE OF LEVY	PROPERTY LEVIED ON
12-11-92	REAL PROPERTY. AS LISTED IN DEED BOOK 47 PAGES 514 AND BOOK 401 Pg. 517 AND PLAT 40 pg. 63. BY SERVING HELEN GENTRY.

NOTE TO SHERIFF: If levy is made on real property, you must certify the levy, and the names of all parties to the action, to the Clerk of the Superior Court of the county in which the land lies.

☐ No levy has been made within ten (10) days after the issuance of this order of attachment for the following reasons:

Fee Paid	Date Received	Sheriff
$	DEC 9 1992	B W Leary
	Date Served 12-11-92	County Durham
	Date Returned 12-11-92	Deputy sheriff making return C Barbee 536

Judgment Docket Book and Page Number (if real property attached)

Book 1120 Page 57

STATE OF NORTH CAROLINA

Durham County

File No. 92 CVS 04677

Film No.

In the General Court of Justice
☐ District Court Division ☐ Superior Court Division

Plaintiff
MILTLAND RALEIGH-DURHAM, (A Partnership), individually and in the right of Myers Miltland Raleigh-Durham Limited Partnership

VERSUS

Defendant
PETER W. MUDIE

AFFIDAVIT IN ATTACHMENT PROCEEDING

GS 1-440.11

The undersigned affiant, applying for an order of attachment and being first duly sworn, says that an action has been or is about to be commenced to secure a judgment for the amount and purpose indicated below and that the plaintiff is entitled to recover the amount for which judgment is sought over and above all counterclaims known to him.

Nature of this action is as follows: To recover damages suffered by the Plaintiff as a result of the fraud, negligence and unfair and deceptive practices of the Defendant, as more fully set out in the allegations of the Complaint attached hereto and incorporated herein by reference, which allegations are true to the best knowledge and belief of the Affiant.

Amount Sought
$ more than 330,000

The grounds for attachment are that the defendant is: *(check one or more)*

- ☒ A nonresident.
- ☐ A foreign corporation.
- ☐ A domestic corporation whose president, vice president, secretary or treasurer cannot be found in the state after due diligence.
- ☐ A resident of the state who, with intent to defraud his creditors, or to avoid service of summons
  - ☐ has departed, or is about to depart from the state.
  - ☐ keeps himself concealed therein.
- ☐ A person or a domestic corporation which, with intent to defraud his or its creditors,
  - ☐ has removed or is about to remove, property from this state.
  - ☐ has assigned, disposed of, secreted, or is about to assign, dispose of, or secrete, property.

The facts and circumstances supporting allegations or acts committed with intent to defraud creditors are as follows:

SWORN AND SUBSCRIBED TO BEFORE ME

Date 12/4/92

Signature of person authorized to administer oaths: Carol P. Bergner

NOTARY PUBLIC STATE OF FLORIDA
OFFICIAL NOTARY SEAL
CAROL P BERGNER
COMMISSION NUMBER
CC225300
MY COMMISSION EXP.
APR. 23,1995

#CC225300

Signature of Affiant: Richard A. Stark

RICHARD A. STARK.
GENERAL PARTNER
MILTLAND RALEIGH-DURHAM

☐ Plaintiff ☐ Attorney ☐ Agent

29a

(OVER)

AOC-CV-300
Rev. 2/82

Original File Copy-Each Def. Copy-Attv/Plf.

PLAINTIFF'S BOND

I, as principal, and the undersigned surety, do acknowledge that upon the issuance of this order of attachment we shall be bound to the defendant in the amount shown below. The condition of this bond is that if the order of attachment is thereafter disssolved, dismissed or set aside by the court, or if I fail to obtain judgment against the defendant, I will pay all costs that may be awarded to the defendant and all damages that the defendant may sustain by reason of the attachment, provided that the liability of the undersigned surety shall be limited to the amount of this bond.

Date December 8, 1992	Signature of plaintiff (principal) Richard A. Stark, General Partner MILLRAND RALEIGH-DURHAM
Amount of bond $ 5,000.00	Name of surety Firemen's Insurance Company of Newark, New Jersey
Signature of additional surety, if used	Signature of surety Matthew W. Varner, Attorney-In-Fact
Address	Address 301 S. Tryon St., Suite 2600
City, State, Zip	City, State, Zip Charlotte, North Carolina 28282-0001

JUSTIFICATION

The undersigned surety, being first duly sworn, says that he is a resident of the State of North Carolina, and worth the amount of the bond, over and above all liabilities and exemptions allowed by law.

SWORN AND SUBSCRIBED TO BEFORE ME	Signature of surety Firemen's Insurance Company of Newark, New Jersey
Date 12-8-92	By: Matthew W. Varner, Attorney-In-Fact
Signature Barbara S. Briggs	Signature of additional surety, if used
Title of person authorized to administer oaths Notary Public My Comm. Exp:12-30-94	

NORTH CAROLINA

DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
92 CVS 04677

MILTLAND RALEIGH-DURHAM,
(A Partnership), individually and in the right of
Myers Miltland Raleigh-Durham Limited Partnership,

Plaintiff,

v.

PETER W. MUDIE,

Defendant.

RETURN OF WARRANT

To the Clerk of the Superior Court of Durham County.

I hereby certify that under and by virtue of an order of attachment issued by the Clerk of the Superior Court of Durham County in the above entitled action against the property of Peter W. Mudie, the Defendant therein, I have attached and levied upon certain real estate situate in your County of Durham, and described as follows:

TRACT ONE

BEGINNING at a point in the inside line of the sidewalk on the North side of West Main Street in the City of Durham, which point and place of beginning is South 50 deg. East 94.05 feet from the inside line of the sidewalk on the East side of Corcoran Street with the inside line of the sidewalk on the North side of

West Main Street, said point and place of beginning is also in the center of the East brick wall of the building owned and now occupied by F.W. Woolworth Company, and running thence through the center of said brick wall North 38 deg. 55 min. East 86.1 feet to a building now or formerly owned by the Dr. N.M. Johnson Estate; thence South 50 deg. East 26 feet; thence South 39 deg. 29 min. West 86.1 feet to a point in the inside line of the sidewalk on the North side of West Main Street; thence along and with the inside line of the sidewalk on the North side of West Main Street North 50 deg. West 25.23 feet to the point and place of beginning, and being the lot or parcel of land surveyed by Hunter Jones, C.E., on May, 1946, and designated as the property of Mrs. Minnie G. Tatum Estate as will fully appear by reference to said map which is on file in the office of the Register of Deeds of Durham County in Plat Book 19, page 44. There is also included in this conveyance any and all rights and privileges of Grantor in and to a party wall agreement made and entered into on June 1, 1914, by and between F.C. Geer and J.W. Tatum, which party wall agreement is recorded in the office of the Register of Deeds of Durham County in Deed Book 47, page 514.

TRACT TWO

BEGINNING at the northwest intersection of University Drive and Woodridge Drive and running thence with Woodridge Drive South 88° 58' West 97.5 feet to an iron stake; thence North 0° 39' East 196.90 feet to an iron stake, the southwest corner of Lot 3(a); thence with said Lot North 67° 12' East 126.8 feet to James Street; thence with said street South 22° 48' East 125 feet to University Drive; thence with University Drive as it curves in a counterclockwise direction a distance of 146.95 feet to the BEGINNING, and being all of Lot 4 (a and b) Block F of Rockwood Center recorded in Plat Book 9 at Page 113 and the eastern

part of Lot 13 Block D of Rockwood Plat Book 6, Page 65 and being the same property conveyed to Theodore Stuart Royall, Jr. and wife, Linda L. Royall in the following Deed Books: Deed Book 401 at Page 168 and Deed Book 401 at Page 517 to which reference is made.

TRACT THREE

PARCEL 1:

BEING all of Tracts 13, 14, 17 and 18, Property of ALFRED TRICE ESTATE, as per a plat thereof on file in the office of the Register of Deeds of Durham County in Plat Book 40, Page 63, to which plat reference is hereby made.

PARCEL 2:

All the grantor's right, title and interest in and to the property designated as Norfolk Southern Railway which lies to the south of Lots 17 and 18 and to the north of Lots 13 and 14, all as described on the map referred to in the description of Parcel 1 above.

This ___ day of _____, 1992.

_____

Sheriff of Durham County

APPENDIX H

SELECTED PROVISIONS FROM THE NORTH CAROLINA ATTACHMENT STATUTE

§1-440.1. Nature of attachment.

(a) Attachment is a proceeding ancillary to a pending principal action, is in the nature of a preliminary execution against property, and is intended to bring property of a defendant within the legal custody of the court in order that it may subsequently be applied to the satisfaction of any judgment for money which may be rendered against the defendant in the principal action.

(b) No personal judgment, even for costs, may be rendered against a defendant unless personal jurisdiction has been acquired as provided in G.S. 1-75.3.

(c) Although there is no personal service on the defendant, or on an agent for him, and although he does not make a general appearance, judgment may be rendered in an action in which property of the defendant has been attached which judgment shall provide for the application of the attached property, by the method set out in G.S. 1-440.46, to the satisfaction of the plaintiff's claim as established in the principal action. If plaintiff's claim is not thereby satisfied in full, subsequent actions for the unsatisfied balance are not barred. (1947, c. 693, s. 1; 1967, c. 954, s. 3.)

§ 1-440.2. Actions in which attachment may be had.

Attachment may be had in any action the purpose of which, in whole or in part, or in the alternative, is to secure a judgment for money, or in any action for alimony or for maintenance and support, or an action for

the support of a minor child, but not in any other action. (1947, c. 693, s. 1; 1967, c. 1152, s. 4; c. 1153, s. 3.)

§1-440.3. Grounds for attachment.

In those actions in which attachment may be had under the provisions of G.S. 1-440.2, an order of attachment may be issued when the defendant is

(1) A nonresident, or

(2) A foreign corporation, or

(3) A domestic corporation, whose president, vice-president, secretary or treasurer cannot be found in the State after due diligence, or

(4) A resident of the State who, with intent to defraud his creditors or to avoid service of summons,

a. Has departed, or is about to depart, from the State, or

b. Keeps himself concealed therein, or

(5) A person or domestic corporation which, with intent to defraud his or its creditors,

a. Has removed, or is about to remove, property from this State, or

b. Has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, property. (1947, c. 693, s. 1.)

§1-440.4. Property subject to attachment.

All of a defendant's property within this State which is subject to levy under execution, or which in supplemental proceedings in aid of execution is subject to the satisfaction of a judgment for money, is subject to attach-

ment under the conditions prescribed by this Article. (1947, c. 693, s. 1.)

§ 1-440.5. By whom order issued; when and where; filing of bond and affidavit.

(a) An order of attachment may be issued by

(1) The clerk of the court in which the action has been, or is being, commenced, or by

(2) A judge of the appropriate trial division, as authorized in subsection (b) of this section.

(b) An order of attachment issued by a judge may be issued as follows:

(1) If the action has been or is being commenced in the Superior Court Division, a resident superior court judge of the district, or a judge regularly holding the superior courts of the district, may issue the order in open court or in chambers, in session or in vacation, and within or without the district. Any other judge holding a session of superior court in the county may issue the order in open court.

(2) If the action has been or is being commenced in the District Court Division, the presiding judge, the chief district judge, or any district judge authorized by the chief to hear motions and enter interlocutory orders may issue the order in open court or in chambers in session or in vacation.

(c) In those cases where the order of attachment is issued by the judge, such judge shall cause the bond required by G.S. 1-440.10 and the affidavit required by G.S. 1-440.11 to be filed promptly with the clerk of the

court of the county in which the action is pending. (1947, c. 693, s. 1; 1971, c. 268, s. 30.)

§1-440.7. Time within which service of summons or service by publication must be had.

(a) When an order of attachment is issued before the summons is served.

(1) If personal service within the State is to be had, such personal service must be had within 30 days after the issuance of the order of attachment;

(2) If such personal service within the State is not to be had,

a. Service of the summons outside the State, in the manner provided by Rule 4(j)(9)a or b of the Rules of Civil Procedure, must be had within 30 days after the issuance of the order of attachment, or

b. Service by publication must be commenced not later than the thirty-first day after the issuance of the order of attachment. If publication is commenced, such publication must be completed as provided by Rule 4(j)(9)c of the Rules of Civil Procedure unless the defendant appears in the action or unless personal service is had on him within the State.

(b) Upon failure of compliance with the applicable provisions of subsection (a) of this section, either the clerk or the judge shall, upon the motion of the defendant or any other interested party, make an order dissolving the attachment, and the defendant shall have all the rights that would accrue to him under the provisions

of G.S. 1-440.45, the same as if the principal action had been prosecuted to judgment and the defendant had prevailed therein. (1947, c. 693, s. 1; 1967, c. 954, s. 3; 1971, c. 1093, ss. 14, 15.)

§1-440.10. Bond for attachment.

Before the court issues an order of attachment, the plaintiff must furnish a bond as follows:

(1) The amount of the bond shall be such as may be fixed by the court issuing the order of attachment and shall be such as may be deemed necessary by the court in order to afford reasonable protection to the defendant, but shall not be less than two hundred dollars ($200.00);

(2) The condition of the bond shall be that

a. If the order of attachment is dissolved, dismissed or set aside by the court, or

b. If the plaintiff fails to obtain judgment against the defendant, the plaintiff will pay all costs that may be awarded to the defendant and all damages that the defendant may sustain by reason of the attachment, the surety's liability, however, to be limited to the amount of the bond. (1947, c. 693, s. 1.)

§1-440.11. Affidavit for attachment; amendment.

(a) To secure an order of attachment, the plaintiff, or his agent or attorney in his behalf, must state by affidavit

(1) In every case:

a. The plaintiff has commenced or is about to commence an action, the purpose of which, in whole or in part, or in the alternative, is

to secure a judgment for money, and the amount thereof,

b. The nature of such action, and

c. The ground or grounds for attachment (one or more of those stated in G.S. 1-440.3); and

(2) In those cases described below, the additional facts indicated:

a. If the action is based on breach of contract, that the plaintiff is entitled to recover the amount for which judgment is sought over and above all counterclaims known to him;

b. If it is alleged as a ground for attachment that the defendant has done, or is about to do, any act with intent to defraud his creditors, the facts and circumstances supporting such allegation.

(b) A verified complaint may be used as the affidavit required by this section.

(c) The court, in its discretion, at any time before judgment in the principal action, may allow any such affidavit to be amended even though the original affidavit is wholly insufficient.

(d) An amendment of an insufficient affidavit of attachment relates to the beginning of the attachment proceeding, and no rights based on such irregularity can be required by any third party by any subsequent attachment intervening between the original affidavit and the amendment. (1947, c. 693, s. 1.)

§1-440.14. Notice of issuance of order of attachment when no personal service.

(a) When service of process by publication is made subsequent to the original order of attachment, the published and mailed notice of service of process shall include notice of the issuance of the order of attachment.

(b) When the original order of attachment is issued after publication is begun, a notice of the issuance of the order of attachment shall be published once a week for four successive weeks in some newspaper published in the county in which the action is pending, such publication to be commenced within 30 days after the issuance of the order of attachment. Such notice shall show

(1) The county and the court in which the action is pending,

(2) The names of the parties,

(3) The purpose of the action, and

(4) The fact that on a date specified an order was issued to attach the defendant's property.

(c) If no newspaper is published in the county in which the action is pending, the notice

(1) Shall be published once a week for four successive weeks in some newspaper published in the same judicial district, or

(2) Shall be posted at the courthouse door in the county for 30 days. (1947, c. 693, s. 1; 1967, c. 954, s. 3.)

§1-440.36. Dissolution of the order of attachment.

(a) At any time before judgment in the principal action, a defendant whose property has been attached may specially or generally appear and move, either before

the clerk or the judge, to dissolve the order of attachment.

(b) When the defect alleged as grounds for the motion appears upon the face of the record, no issues of fact arise, and the motion is heard and determined upon the record.

(c) When the defect alleged does not appear upon the face of the record, the motion is heard and determined upon the affidavits filed by the plaintiff and the defendant, unless, prior to the actual commencement of the hearing, a jury trial is demanded in writing by the plaintiff or the defendant. Either the clerk or the judge hearing and determining the motion to dissolve the order of attachment shall find the facts upon which his ruling thereon is based. If a jury trial is demanded by either party, the issues involved shall be submitted and determinted at the same time the principal action is tried, unless the judge, on motion of any party for good cause shown, orders an earlier trial or a separate trial. (1947, c. 693, s. 1.)

§ 1-440.39. Discharge of attachment upon giving bond.

(a) Any defendant whose property has been attached may move, either before the clerk or the judge, to discharge the attachment upon his giving bond for the property attached. If no prior general appearance has been made by such defendant, such motion shall constitute a general appearance.

(b) The court hearing such motion shall make an order discharging such attachment upon such defendant's filing a bond as follows:

(1) If it is made to appear to the satisfaction of the court by affidavit that the property attached is

of a greater value than the amount claimed by the plaintiff, the court shall require a bond in double the amount of the judgment prayed for by the plaintiff, and the condition of such bond shall be that if judgment is rendered against the defendant, the defendant will pay to the plaintiff the amount of the judgment and all costs that the defendant may be ordered to pay, the surety's liability, however, to be limited to the amount of the bond.

(2) If it is made to appear to the satisfaction of the court by affidavit that the property attached is of less value than the amount claimed by the plaintiff, the court shall, upon affidavits filed, determine the value thereof and shall require a bond in double the amount of such value, and the condition of the bond shall be that if judgment is rendered against the defendant, the defendant will pay to the plaintiff an amount equal to the value of such property.

(c) If a bond is filed as provided in subsection (b) of this section, all property of such defendant than remaining in the possession of the sheriff pursuant to such attachment, including, but not by way of limitation, money collected and the proceeds of sales, shall be delivered to the defendant and shall thereafter be free from the attachment.

(d) The discharge of an attachment as provided by this section does not bar the defendant from exercising any right provided by G.S. 1-440.36, 1-440.37 or 1-440.40. (1947, c. 693, s. 1.)

§1-440.44. When attached property to be sold before judgment.

(a) The sheriff shall apply to the clerk or to the judge for authority to sell property, or any share or interest therein, seized pursuant to an order of attachment,

(1) If the property is perishable, or

(2) If the property is not perishable, but

a. Will materially deteriorate in value pending litigation, or

b. Will likely cost more than one fifth of its value to keep pending a final determination of the action, and

c. Is not discharged from the attachment lien in the manner provided by G.S. 1-440.39 within ten days after the seizure thereof.

(b) If the court so orders, the property described in subsection (a) of this section shall thereupon be sold under the direction of the court unless the discharge of the same is secured by the defendant or other person interested therein, in the manner provided by G.S. 1-440.39, prior to such sale. The proceeds of such sale shall be liable for any judgment obtained in the principal action and shall be retained by the sheriff to await such judgment. (1947, c. 693, s. 1.)

APPENDIX I

ARTICLE 1

The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.

This Convention shall not apply where the adress of the person to be served with the document is not known.

CHAPTER I – JUDICIAL DOCUMENTS

ARTICLE 2

Each contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other contracting States and to proceed in conformity with the provisions of articles 3 to 6.

Each State shall organise the Central Authority in conformity with its own law.

ARTICLE 3

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legislation or other equivalent formality.

The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

ARTICLE 4

If the Central Authority considers that the request does not comply with the provisions of the present Convention it shall promptly inform the applicant and specify its objections to the request.

ARTICLE 5

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either –

(*a*) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or

(*b*) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph (*b*) of the first paragraph of this article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official languages or one of the official languages of the State addressed.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

ARTICLE 6

The Central Authority of the State addressed or any authority which it may have designated for that purpose,

shall complete a certificate in the form of the model annexed to the present Convention.

The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service.

The applicant may require that a certificate not completed by a Central Authority or by a judicial authority shall be countersigned by one of these authorities.

The certificate shall be forwarded directly to the applicant.

ARTICLE 7

The standard terms in the model annexed to the present Convention shall in all cases be written either in French or in English. They may also be written in the official language, or in one of the official languages, of the State in which the documents originate.

The corresponding blanks shall be completed either in the language of the State addressed or in French or in English.

* * *

ARTICLE 10

Provided the State of destination does not object, the present Convention shall not interfere with –

(*a*) the freedom to send judicial documents, by postal channels, directly to persons abroad,

(*b*) the freedom of judicial officers, officials or other competent persons of the State of origin to effect

service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,

(*c*) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

* * *

ARTICLE 15

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that –

(*a*) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or

(*b*) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled –

(*a*) the document was transmitted by one of the methods provided for in this Convention,

(*b*) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document, —

(*c*) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

* * *

ARTICLE 19

To the extent that the internal law of a contracting State permits methods of transmission, other than those provided for in the preceding articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions.

* * *

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters. Done at The Hague November 15, 1965; entered into force for the United States February 10, 1969. 20 UST 361; TIAS 6638; 658 UNTS 163. States which are parties:

Antiqua and Barbuda[1]
Barbados[1a]
Belgium[2]
Botswana[2a]

Canada[3]
China[3a]
Cyprus[3b]
Czech Republic[3c]
Denmark[4]
Egypt[5]
Finland[6]
France[7]
Federal Republic of Germany[7a]
Greece[7b]
Israel[8]
Italy[8a]
Japan[9]
Luxembourg[9a]
Malawj[10]
Netherlands[10a]
Norway[11]
Pakistan[11a]
Portugal[11b]
Seychelles[11c]
Slovak Republic[11d]
Spain[11e]
Sweden[12]
Turkey[13]
United Kingdom[14]
United States[15]

* * *

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[7] With the following declarations:

"1. In conformity with articles 2 and 18 of the Convention, the Ministry of Justice, Civil Division of International Judicial Assistance (Ministaere de la Justice, Service Civil de l'Entraide judiciare internationale), 13 Place Vendome, Paris (1er), is designated as the Central Authority to the exclusion of all other authorities.

2. The authority competent to complete the certificate referred to in Article 6 is the Public Prosecutor of the Republic (Procureur de la Republique) in whose district the addressee of the document to be served resides.

3. The Public Prosecutor of the Republic (Procureur de la Republique) is likewise authorized to receive documents forwarded through consular channels in accordance with Article 9.

4. The Government of the French Republic declares that it is opposed, as has been provided for in Article 8, to the direct service, through diplomatic and consular agents of the contracting States, of documents upon persons who are not nationals of those States.

5. The Government of the French Republic declares that the provisions of the second paragraph of Article 15 have its

approval. It furthermore declares, with reference to Article 16, paragraph 3, that an application for relief from the effects of the expiration of the time for appeal from a judgment will not be entertained if it is filed more than twelve months following the date of the judgment."